

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

RUSSELL COHN, PATRICIA J.)
COHN,)
Plaintiffs,) No. C04-1843 BZ
)
v.)
) BRIEFING ORDER
CONTRA COSTA HEALTH SERVICES)
DEPARTMENT; CITY OF ORINDA,)
Does 1 through 50,)
Defendants.)
_____)

At trial plaintiffs were granted leave to amend their pleadings to conform to proof. On **January 18, 2006**, plaintiffs shall file a brief in support of the new claims, identifying the elements of each of the claims, discussing the evidence which supports each of the elements and any authority which supports their position that they are entitled to relief on each claim. By **January 25, 2006**, defendants shall file an opposition. Any reply shall be filed by **January 30, 2006**.

In their briefs the parties should address the following issues:

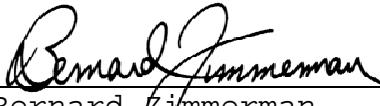
1. Does the Constitution require that plaintiffs be

afforded an appeal to either the City Council or the Board of Supervisors? See David v. City of Los Angeles, 307 F.3d 1143, 1147 (9th Cir. 2002), *rev'd on other grounds*, 538 U.S. 715 (2003), *remanded to* 335 F.3d 857 (9th Cir. 2003) (denying plaintiff's claim that the "mere fact that the hearing examiner was employed by the agency—or the City—was sufficient to show a due process violation because the officer who ordered the towing and storage worked for the agency also").

2. Can defendants be estopped into issuing plaintiffs a septic permit that does not comply with the local ordinances and regulations? See Merco Construction v. Los Angeles Unified etc., 274 Cal. App. 2d 154, 161 (1969) ("estoppel is not available to: ... compel an agency [to do something] when a statute limits the agency's power to do so and the statute has not been complied with").

A copy of all briefs shall be delivered to chambers on a floppy diskette containing a copy of the document formatted in WordPerfect 6.1, 8, 9 or 10 (Windows) or WordPerfect 5.1 (DOS).

Dated: January 12, 2006



Bernard Zimmerman
United States Magistrate Judge

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